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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 519 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not?-Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

CHATURBHAI HAJURBHAI PARMAR

Appearance:

MR SK BUKHARI for Petitioner
Respondent served.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/04/97

ORAL JUDGEMENT

This petition is directed against the Judgment and Award dated July 27, 1993 passed by the Labour Court,

Nadiad in Reference (LCN) No.68 of 1990, directing the petitioner-Gujarat State Road Transport Corporation to reinstate the respondent in service with continuity of service and further directing the petitioner-Corporation to pay the respondent 50% of the back wages for the intervening period.

2. Heard Mr.S.K. Bukhari for the petitioner-Gujarat State Road Transport Corporation (hereinafter referred to as "The Corporation"). The respondent is served, but has chosen not to appear either in person or through any Advocate.

3. The respondent-workman was employed by the petitioner as a Driver. However, the respondent remained absent from duty from January 12, 1987 onwards for months together without even submitting any leave report. The petitioner-Corporation, therefore, had no other alternative but to initiate a departmental enquiry against the respondent for the said misconduct. After holding a departmental enquiry, the petitioner-Corporation passed an order dated January 2, 1988 dismissing the petitioner from service. Even till the date of dismissal, the respondent had not resumed duties. The respondent had thus remained unauthorisedly absent for almost one year.

4. At the hearing before the Labour Court, the respondent contended that the respondent was ill and, he was staying with his relative and, therefore, the letters or notices issued by the petitioner-Corporation were not received by him. The respondent also admitted that he had not sent any application for leave on the ground that on account of his illness he could not send any application. Mr.Bukhari further points out that the respondent did not produce any evidence in support of his claim of alleged illness either before the Corporation or before the Labour Court, but the respondent tendered his apology and assured that the mistake committed by him earlier will not be repeated. The respondent prayed for an opportunity to improve his conduct in future.

5. After hearing both the parties, the Labour Court came to the conclusion that the penalty of dismissal was too harsh and disproportionate and a sympathetic view was required to be taken to give the respondent-workman one more opportunity. Accordingly, the Labour Court set aside the order of dismissal and directed the Corporation to reinstate the respondent workman in service, with continuity of service, but the Labour court also directed the Corporation to pay the respondent 50% back wages for

the intervening period of about five years.

6. While issuing Rule on the present petition, challenging the above Award, this Court had granted ad interim stay of direction for back wages only.

Mr. Bukhari, learned Advocate for the Petitioner-Corporation, has fairly stated at the final hearing that the Corporation is not pressing the challenge against the order of reinstatement and that the Corporation has already complied with the order of reinstatement. However, the Corporation is seriously aggrieved by the order for payment of 50% back wages.

7. In my view, the grievance made on behalf of the petitioner-Corporation is well justified. The respondent remained absent from duty for one year without submitting any application for leave. The petitioner-Corporation, a Public Utility Undertaking, had no other alternative, but to hold a departmental enquiry and the respondent did not appear even at the departmental enquiry, with the result that the Corporation could not have been expected to pass any order other than an order dismissing the respondent from service. Setting aside of the order of dismissal, the direction by the Labour Court for reinstatement in his favour and compliance with the said direction by the Corporation taken together is more than what the respondent could have legitimately got if work ethics were followed in public sector with the seriousness which they deserve.

8. Where the order of dismissal or termination is set aside, back wages are awarded, depending on the facts and circumstances of each individual case. Whenever such a direction for payment of back wages is given, it is usually on the ground that the workman was prepared to render services after dismissal, just as before dismissal; but the employer was not prepared to accept the services. Another way of looking at the problem is to find out who should be required to bear the burden of wages for the period consumed by the process of adjudication. For this inquiry, the conduct of the workman resulting into dismissal has to be treated as one of the most decisive factors. In the instant case, the petitioner-Corporation was constrained to pass the order of dismissal only because the respondent had remained unauthorisedly absent for one year without even submitting any application for leave. This was not even disputed before the Labour Court. The finding of the Labour Court that the penalty of dismissal was too harsh or disproportionate cannot, therefore, be said to be free from doubt. Under the circumstances, the Labour Court

did commit a material error apparent on the face of the record in giving the direction for payment of 50% back wages. No other factor is brought to my notice which could dissuade me from taking this view. I am satisfied that in the facts and circumstances of the case, no direction for payment of back wages was required to be issued against the petitioner-Corporation.

9. In view of the aforesaid discussion, the direction given by the Labour Court, requiring the petitioner-Corporation to pay the respondent 50% of back wages is hereby set aside. The Award shall stand modified accordingly.

10. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

(apj) ****